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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

18 Cr. 30 (PAC)

5 JOSEPH CUCCINIELLO,

6 Defendant.

7 -----x

8 August 8, 2018
9 2:30 p.m.

10 Before:

11 HON. PAUL A. CROTTY,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
17 Southern District of New York

BY: CATHERINE E. GHOSH

17 Assistant United States Attorney

18 LEO D. DUVAL

19 Attorney for Defendant

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(Case called)

THE DEPUTY CLERK: Counsel for the government. Please state your appearance.

MS. GHOSH: Good afternoon, your Honor. Catherine Ghosh for the United States.

THE COURT: Ms. Ghosh.

MR. DUVAL: Good afternoon, your Honor. Leo V. Duval, with offices at 885 Annadale Road in Staten Island for Joseph Cucciniello, Jr. Good afternoon, sir.

THE COURT: Hello, Mr. Duval. How are you?

MR. DUVAL: Very well. Thank you.

THE COURT: Mr. Cucciniello, how are you?

THE DEFENDANT: Good. How are you, your Honor.

THE COURT: Ms. Ghosh, what are we doing today? Are we going to take a plea from Mr. Cucciniello?

MS. GHOSH: Yes, your Honor.

THE COURT: Mr. Duval, have you explained the procedure to Mr. Cucciniello?

MR. DUVAL: Yes, I have, sir.

THE COURT: Do you want to swear Mr. Cucciniello in?

(Defendant sworn)

THE DEPUTY CLERK: Defendant is sworn.

THE COURT: Please sit down, Mr. Cucciniello. Make yourself comfortable.

MR. DUVAL: May I be seated as well?

I885cucP

1 THE COURT: Yes, please.

2 MR. DUVAL: Thank you.

3 THE COURT: Mr. Cucciniello, I want to remind you now
4 that you are under oath and you have to answer truthfully the
5 questions I put to you. If I ask you a question you don't
6 understand, please turn to Mr. Duval and he will help us
7 clarify for you.

8 This is important: You have to tell the truth because
9 you can be prosecuted for perjury or making a false statement
10 if you tell something that is untrue.

11 Mr. Cucciniello, would you state your name for the
12 record and give us your date of birth?

13 THE DEFENDANT: Joseph Cucciniello. February 13th,
14 1994.

15 THE COURT: And where were you born?

16 THE DEFENDANT: Staten Island, New York.

17 THE COURT: Did you go to school?

18 THE DEFENDANT: Yes.

19 THE COURT: How far did you get in school?

20 THE DEFENDANT: Some college.

21 THE COURT: Okay.

22 Are you currently under the care of a physician or
23 psychiatrist for any mental or emotional problems?

24 THE DEFENDANT: Yes.

25 THE COURT: Can you tell me what the nature of your --

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1 is it medical or -- mental or emotional problems? What are
2 they?

3 THE DEFENDANT: Just, it's a drug program.

4 THE COURT: Okay. Do you take medicine for it?

5 THE DEFENDANT: Sorry, your Honor?

6 THE COURT: Do you take medicine for it?

7 THE DEFENDANT: Yes.

8 THE COURT: Does it affect how you think?

9 THE DEFENDANT: No.

10 THE COURT: Is your mind clear today?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you know what you are doing?

13 THE DEFENDANT: Yes.

14 THE COURT: Is Mr. Duval your lawyer?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you talked with Mr. Duval?

17 THE DEFENDANT: Yes.

18 THE COURT: He has shown you a copy of the indictment?

19 THE DEFENDANT: Yes.

20 THE COURT: And you understand what you are being
21 charged with?

22 THE DEFENDANT: Yes.

23 THE COURT: And are you satisfied with Mr. Duval's
24 counsel and advice and the representation that he has given to
25 you?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Now, Mr. Cucciniello, you have given up
3 valuable rights by agreeing to plead guilty. I have to advise
4 you of the consequences of your plea. First of all, you don't
5 have to plead guilty, you can plead not guilty and persist in
6 that plea.

7 Do you understand?

8 THE DEFENDANT: Yes.

9 THE COURT: You are entitled to a trial by jury of 12
10 people sitting in that jury box over there. You would be
11 presumed innocent. The government would have to prove your
12 guilt beyond a reasonable doubt and the jury of 12 would have
13 to be unanimous.

14 Do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: You have the right to the assistance of
17 counsel for your defense. If necessary, I will appoint counsel
18 at trial and every step of the proceeding.

19 Do you understand?

20 THE DEFENDANT: Yes.

21 THE COURT: You have the right to see and hear all the
22 witnesses and to have Mr. Duval cross-examine then in your
23 defense, he can object to the government's evidence.

24 Do you understand?

25 THE DEFENDANT: Yes.

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1 THE COURT: You have the right to receive and present
2 evidence and to the issuance of subpoenas or compulsory process
3 to compel the attendance of witnesses to testify in your
4 defense.

5 Do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: You have the right not to testify or not
8 to call any witnesses and, if you decided not to testify or
9 call witnesses, I would instruct the jury that it could not
10 take into consideration your decision not to testify or put on
11 any evidence.

12 Do you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: Mr. Cucciniello, if I accept the plea
15 there will be no trial and you will waive or give up your
16 rights to a trial, as well as those rights that we have just
17 discussed.

18 Do you understand?

19 THE DEFENDANT: Yes.

20 THE COURT: I will be able to sentence you just as if
21 there had been a jury verdict on a full trial on the merits.

22 Do you understand?

23 THE DEFENDANT: Yes.

24 THE COURT: Will you mark as Exhibit 1 a letter dated
25 June 15 addressed to Mr. Duval from the U.S. Attorney's office?

I885cucP

1 Ms. Ghosh, did you sign this letter? I don't have a
2 signed copy here.

3 MS. GHOSH: My apologies. AUSA Stephanie Lake signed
4 it.

5 THE COURT: All right.

6 MR. DUVAL: June 1st. I think the Court said June
7 15th.

8 THE COURT: Mine says June 15th.

9 MR. DUVAL: One of them says June 15th and the other
10 says June 1st. Your Honor, I think the one we executed says
11 June 1st, but there is one in front of my client at the moment
12 that says June 15, and there is one addressed to me June 1st
13 also that was my file copy.

14 THE COURT: Hmm. Do you have an extra copy of the
15 June 1st?

16 MR. DUVAL: Yes, I do. I have two extra copies of
17 June 1st. Shall we re-execute those, your Honor?

18 THE COURT: No. If I can have one copy of June 1st?

19 Mr. Cucciniello, could you turn to page 6 of this June
20 1st letter? Is that your signature?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you talk to Mr. Duval about this
23 before you signed it?

24 THE DEFENDANT: Yes.

25 THE COURT: Did you sign it willingly and voluntarily?

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1 THE DEFENDANT: Yes.

2 THE COURT: Nobody made any threats or promises to get
3 you to sign this, did they?

4 THE DEFENDANT: No.

5 THE COURT: Now, if you turn to page 1, you are
6 pleading guilty to a conspiracy to distribute one kilogram of
7 heroin, one kilogram or more of heroin, plus Fentanyl, in a
8 time period from 2015 to 2018.

9 That's what you are pleading to. Do you understand?

10 THE DEFENDANT: Yes.

11 THE COURT: And this carries a maximum term of life
12 imprisonment, the mandatory minimum term of imprisonment of 10
13 years, the maximum term of supervised release of life, the
14 mandatory minimum term of supervised release of five years, and
15 a fine of the greatest of \$10 million, twice the gross
16 pecuniary gain derived from the offense or twice the pecuniary
17 loss to someone other than yourself, and a mandatory \$100
18 special assessment.

19 Do you understand that those are the maximums that can
20 be imposed?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And if you violate the terms of supervised
23 release you will be given further time in jail.

24 Do you understand?

25 THE DEFENDANT: Yes.

I885cucP

1 THE COURT: Now, at page 2, Mr. Cucciniello, at the
2 very top, you are also agreeing to the forfeiture allegations
3 of the indictment.

4 Do you understand?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Did you review with Mr. Duval how the
7 guidelines are calculated as set forth on page 2?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And the Criminal History Category is set
10 at 1 because you have no criminal history points; is that
11 accurate?

12 THE DEFENDANT: Yes.

13 THE COURT: Now, the sentencing range at page 3, the
14 stipulated guideline range is 87 to 108 months with a mandatory
15 minimum term of 120 months, but you apparently meet the
16 conditions set forth at Title 18, U.S.C., 3553. That's called
17 safety-valve. So, I don't have to impose the statutory minimum
18 sentence.

19 Do you understand?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Now, at page 4 it points out, and I want
22 to call to your attention that the Probation Office is not
23 bound by the guideline stipulation, that's an agreement between
24 Mr. Duval and the U.S. Attorney's office.

25 Do you understand there can be changed in the

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1 guideline calculation?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And the next paragraph, Mr. Cucciniello,
4 points out that I have complete discretion in sentencing you
5 anywhere from the minimum to the maximum and the guidelines are
6 not binding on the Court, I have complete discretion.

7 Do you understand?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: In addition to pleading guilty, you are
10 also agreeing not to file a direct appeal or collaterally
11 attack your sentence if it is within or below the guideline
12 range of 87 to 108 months.

13 Do you understand?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: The final paragraph on page 4,
16 Mr. Cucciniello, it says that you are acknowledging to accept
17 this agreement and deciding to plead guilty because you are in
18 fact guilty. Is that correct?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Okay.

21 Ms. Ghosh, could you please rise now and tell us what
22 the essential elements are of Count One, the conspiracy to
23 distribute and possess with intent to distribute the heroin and
24 Fentanyl, and what your proof would be to establish these
25 elements beyond a reasonable doubt?

I885cucP

1 MS. GHOSH: Yes, your Honor.

2 This charge has two elements that the government must
3 prove beyond a reasonable doubt. First, that two or more
4 persons entered the unlawful agreement charged in the
5 indictment; and second, that the defendant knowingly and
6 willfully became a member of the conspiracy. The unlawful
7 agreement that is charged here is an agreement to violate Title
8 21, United States Code, Sections 841(a)(1), (b)(1)(A) and
9 (b)(1)(C), which make it unlawful for any person, knowingly or
10 intentionally, to distribute or possess with the intent to
11 distribute one kilogram and more of heroin and a detectable
12 amount of Fentanyl. Additionally, the government would have to
13 prove venue in the Southern District by a preponderance of the
14 evidence.

15 The government's evidence at trial would include
16 surveillance of the defendant driving a co-conspirator to
17 deliver narcotics, intercepted communications discussing the
18 narcotics conspiracy, testimony that the defendant drove over
19 the Verrazano Narrows Bridge while obtaining and distributing
20 narcotics, lab reports showing that the narcotics contained
21 both heroin and Fentanyl, and witness testimony that members of
22 the conspiracy distributed over one kilogram of heroin.

23 THE COURT: Mr. Duval, did you conduct an
24 investigation into this matter?

25 MR. DUVAL: Yes, sir.

I885cucP

1 THE COURT: Do you have any reason to suggest that
2 Mr. Cucciniello should not plead guilty?

3 MR. DUVAL: No, your Honor.

4 THE COURT: Okay.

5 Mr. Cucciniello, how do you plead?

6 THE DEFENDANT: Guilty.

7 THE COURT: Okay.

8 Can you rise now, Mr. Cucciniello, and tell us what
9 you did that makes you guilty of Count One in the 18 criminal
10 30?

11 THE DEFENDANT: Your Honor, sometime between 2015 and
12 '18, I, Joseph Cucciniello, agreed with other people to
13 distribute heroin. As part of my involvement, I agreed to
14 drive over, members of the conspiracy, to Brooklyn from Staten
15 Island using the Verrazano Bridge so that they could pick up
16 heroin in Brooklyn and distribute it in Staten Island. On
17 certain occasions I distributed heroin to others myself. I
18 also was aware that the weight of the heroin being distributed
19 by me and other members of the conspiracy over this time period
20 was in excess of one kilogram. I also became aware that some
21 of the heroin being distributed by the conspiracy contained
22 detectable amounts of Fentanyl. I understand that my conduct
23 was illegal and wrong and I accept full responsibility for my
24 actions. I apologize to my family, friends, and community, and
25 I am focusing on my sobriety and becoming a better person.

I885cucP

1 Thank you, your Honor.

2 THE COURT: Okay.

3 Mr. Cucciniello, you were reading from a statement
4 there. Did Mr. Duval help you prepare that?

5 THE DEFENDANT: A little bit, yes.

6 THE COURT: Okay, but you adopt the words as your own?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay.

9 Is that plea satisfactory for your purposes,
10 Ms. Ghosh?

11 MS. GHOSH: Yes, your Honor.

12 THE COURT: Mr. Duval?

13 MR. DUVAL: Yes, sir.

14 THE COURT: Okay. Please, be seated.

15 It is the finding of the Court in the case of United
16 States against Joseph Cucciniello, 18 crim 30, that
17 Mr. Cucciniello is fully competent and capable of entering an
18 informed plea. Mr. Cucciniello is aware of the nature of the
19 charges and the consequences of the plea of guilty. The plea
20 of guilty is knowing, it is voluntary, it is supported by an
21 independent basis in fact containing each of the essential
22 elements of the offense. I therefore accept the plea and
23 adjudge Mr. Cucciniello guilty of the offense charged in Count
24 One of 18 criminal 30.

25 Do we have a date for sentencing?

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1 THE DEPUTY CLERK: Sensing set for Thursday, November
2 15, at 11:00 a.m.

3 THE COURT: Mr. Duval, do you want to be present at
4 any interview?

5 MR. DUVAL: Yes, please.

6 THE COURT: Okay. Bail is continued, Ms. Ghosh.

7 MS. GHOSH: Yes. That's fine with the government.

8 THE COURT: Anything else, Mr. Duval?

9 MR. DUVAL: No, sir. Thank you.

10 THE COURT: Okay. I will see you at sentencing.
11 Thank you very much.

12 THE DEFENDANT: Thank you, your Honor.

13 THE COURT: Thank you, Mr. Cucciniello.

14 I have an extra copy of the June 1 letter. Is that
15 yours, Ms. Ghosh?

16 MS. GHOSH: Yes, thank you. And I confirmed they were
17 the same, so I'm not sure what happened.

18 THE COURT: You dropped a 5.

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